

MEMORANDUM

TO: CHRISTINE KAUFMANN/MEDICAL HOME ADVISORY COMMITTEE

FROM: CHRISTINA GOE, GENERAL COUNSEL

DATE: December 5, 2011

RE: MEDICAL HOME LEGISLATIVE OPTIONS/ DISCUSSION GUIDE

Overall considerations:

The payment method recommended by the patient-centered primary care collaborative is as follows: 1) prospective monthly fee for coordinating care; 2) visit based fee for service payments; and 3) performance incentives to support and reward improved quality, outcomes and practice efficiency. Is this payment method also the goal of this group?

State-led initiatives must meet two tests in order to create immunity from anti-trust laws: (1) clear articulation by the state of its intent to displace competition; and (2) active and ongoing state supervision of the process and results. Once legislation is drafted, the state attorney general should be consulted regarding the anti-trust issues. Other threshold issues include the following:

- If there is a board or commission involved in the legislative proposal, that body must have direct oversight from a state official or other state authority (agency).
- The legislation must be clear about the anti-trust behavior permitted for the purpose of allowing exemption from anti-trust rules.
- The state must review the particular actions of private parties and reject those that do not accord with state policy; therefore, the legislation must contain a clear policy and purpose statement. “Merely authorizing private parties to agree on rates or prices is not sufficient... States must also control the process and exercise sufficient independent judgment so that details of rates or prices are established as the product of deliberate state intervention.”

Types of legislative choices:

1. Threshold question:
 - a. a simple bill that designates an authority and grants it administrative and rule making authority for “filling in” necessary details, in consultation with a board or commission.
 - b. OR a bill that spells out in statute a structure and program in some detail?
2. What statements of purpose, or “Whereas” clauses does the advisory council want? You could start with the Maryland example and add or remove—can look at other examples as well.
3. Authority decisions:
 - a. The legislation must declare the intent to displace competition in order to achieve anti-trust immunity protection. Which agency/state official should have oversight—commissioner, governor, AG?
 - b. What kind of authority should be specified—broad and general or narrow and specific? (Rule making is probably required).

- c. Does the council wish to propose a board or commission in law with the power to operate a pilot program with state oversight?
 - i. What are the powers and duties of the board?
 - ii. How many members?
 - iii. What interests are represented?
 - iv. Who appoints?
 - v. Length of terms, reappointment?
4. An agency must propose administrative rules generally, but can be required to consult with a board/commission.
5. Does the council want to propose an appropriation or should activities be funded by the private entities interested in participating (an assessment or fee)? Self-sustaining without taxpayer money is recommended.

Any legislation drafted should consider the following elements (or should specifically defer some of these decisions be left for later rule making or “plan of operation” decisions):

- What does the council want the oversight body to be labeled? Who will serve? Under which authority? Discuss a label, such as “state health care quality and cost council” (Maryland) Or just “Medical Home council?”
- Do you want to compel cooperation from insurers? I.e. require as a condition of licensure?
- What payments do you want to make uniform?
 - Pay for performance or other performance incentives?
 - Limit to incremental payments to support the costs of implementing the transformation?
 - Coordinating care fees?
 - Base payment (visit) rates?
- For instance, in Pennsylvania the governor’s office receives payment data from providers and then generates a quarterly bill for each payer based on their share of the provider’s revenue that pays only for the cost of implementing the transformation.

Other “policy type” considerations:

- What are the council’s ultimate goals? Or intermediate goals?
 - Shared savings models
 - Standardized coordination of care fee?
 - Implementation fees?
 - Capitated fee arrangements?
 - Recommend a gradual approach “wait and see” approach that might eventually allow any of these options, or restrict options at the outset ?
- Does the council wish to build in enough detail to protect from anti-trust, but enough flexibility so that the “commission” can change course and expand operations if success dictates?